

EXHIBIT 6

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF WISCONSIN
3 SCOTT WEAVER, individually Case No.
4 and on behalf of all others 2:18-cv-01996-JPS
5 similarly situated

6 vs

7 CHAMPION PETFOODS USA,
8 INC., and CHAMPION
9 PETFOODS, LP

10 -----
11 -----
12 Friday, September 20th, 2019
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1 Videotaped Deposition of LORIN HITT,
2 was taken pursuant to Notice at the law offices of
3 GREENBERG TRAURIG, LLP, 1717 Arch Street, Suite 400,
4 Philadelphia, PA 19103, on the above date before
5 DEBRA G. JOHNSON-SPALLONE, CCR, RPR, Delaware CSR,
6 Notary Public in and for the States of Pennsylvania,
7 New Jersey, and Delaware, and a Federally Approved
8 Reporter of the United States District Court
9 commencing on or about 9:05 a.m.

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1	I N D E X		
2	- - - - -		
3	TESTIMONY OF:	LORIN HITT	
4	By Ms. Borrelli.....	6	
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7	- - - - -		
8	E X H I B I T S		
9	- - - - -		
10	EXHIBIT	PAGE	
11	NUMBER	DESCRIPTION	MARKED
12		- - - - -	
13	Hitt-1	Second Rebuttal Expert	
14		Report of Lorin M. Hitt,	
15		September 12, 2019	7
16	Hitt-2	Rebuttal Expert Report	
17		of Lorin M. Hitt,	
18		September 12, 2019	7
19	Hitt-3	Rebuttal Expert Report	
20		of Lorin M. Hitt, May	
21		13, 2019	15
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1 2 ----- 3 P R O C E E D I N G S 4 ----- 5 (It is stipulated and agreed by and 6 between counsel that sealing, and certification of 7 the within deposition be waived; and that all 8 objections, except as to the form of the question, 9 be reserved until the time of trial.) 10 --- 11 (The following is held off of the 12 video record and is recorded on the stenographic 13 record only.) 14 --- 15 COURT REPORTER: Will counsel 16 please state their transcript order on the record. 17 MS. BORRELLI: Yes. Just 18 electronic for now. I need it by Monday. No rough. 19 Final electronic on Monday. 20 MR. KESSLER: We would take a 21 draft, if you could do it. No rush, and then we 22 will do expedited Monday, too. 23 VIDEO TECHNICIAN: Everyone stand 24 by. 25 --- 26 (The following is recorded on both	1 --- 2 EXAMINATION 3 ----- 4 BY MS. BORRELLI: 5 Q. Morning, Dr. Hitt. 6 We have met before a few months 7 ago. 8 A. Yes. Good morning. 9 Q. Good morning. 10 I know you know the ground rules 11 for deposition as you have done this a number of 12 times. 13 I will just remind you; ask anytime 14 you need a break, and let's try not to talk over one 15 another. 16 Okay? 17 A. Okay. 18 Q. All right. 19 Anything that would prevent you 20 from testifying truthfully today? 21 A. No. 22 Q. All right. 23 I'm going to start by handing you 24 what I have marked as Exhibit-1, which is the Second 25 Rebuttal Expert Report of Lorin M. Hitt in the
1 the video record and the stenographic record.) 2 --- 3 VIDEO TECHNICIAN: This is the 4 videographer speaking, Aleisha Catts, here on behalf 5 of Depo International. 6 Today is September 20th of 2019, 7 and the time is 9:06 a.m. 8 We are at 1717 Arch Street, 9 Philadelphia, Pennsylvania to take the video 10 deposition of Lorin Hitt in the matter of Scott 11 Weaver versus Champion Petfood, USA, Incorporate, 12 et al. 13 Will counsel please introduce 14 yourself? 15 MS. BORRELLI: Raina Borrelli from 16 Gustafson Gluek on behalf of the Plaintiffs. 17 MR. KESSLER: Jared Kessler from 18 Greenberg Traurig on behalf of the Defendants. 19 VIDEO TECHNICIAN: Will the court 20 reporter please administer the oath. 21 --- 22 LORIN HITT, after having been first 23 duly sworn as a witness, testified as follows: 24 --- 25 ---	1 Reitman versus Champion case. 2 --- 3 (At which time a Second Rebuttal 4 Expert Report of Lorin M. Hitt, September 5 12, 2019, was received and marked as 6 Deposition Exhibit Hitt-1 for 7 identification by the court reporter.) 8 --- 9 MR. KESSLER: Thank you. 10 --- 11 CONTINUATION 12 BY MS. BORRELLI: 13 Q. Take a look, and let me know if 14 that is your signature on page eight of that report. 15 A. Yes. 16 Q. Okay. 17 And I'm also going to hand you what 18 has been marked as Exhibit-2, your Rebuttal Expert 19 Report of Lorin M. Hitt in Weaver versus Champion 20 dated September 12, 2019. 21 --- 22 (At which time a Rebuttal Expert 23 Report of Lorin M. Hitt, September 12, 24 2019, was received and marked as Deposition 25 Exhibit Hitt-2 for identification by the

1 court reporter.) 2 --- 3 CONTINUATION 4 BY MS. BORRELLI: 5 Q. And do you see your signature on 6 page 46 of Exhibit-2? 7 A. Yes. 8 Q. All right. 9 So, these are the two reports we 10 are here to discuss today; right? 11 A. Okay. 12 Q. I will try not to retry old ground 13 from your previous report and deposition in Reitman 14 unless necessary to clarify anything. 15 Okay? 16 A. Okay. 17 Q. All right. 18 So, Exhibit-1 is your second 19 rebuttal expert report in the Reitman case. 20 Is it fair to characterize your 21 opinions in this report as limited to Dr. Krosnick's 22 second survey regarding Pentobarbital in Mr. Weir's 23 supplemental report? 24 A. I think that's right. It was 25 intended to rebut those directly, and did not, as	1 There are some analysis that was in 2 his original survey which was not in the previous 3 report, and then there is the Pentobarbital 4 discussion as well, which is somewhere between the 5 two, and I believe that's it. 6 Q. In Exhibit-2, your rebuttal report, 7 are you offering any new or different opinions 8 regarding Mr. Weir's report -- 9 A. So -- 10 Q. -- obviously understanding the 11 numbers are different? 12 A. So, the numbers are different. 13 There is -- there is a little bit 14 more discussion on some of the existing points that 15 wasn't there before, but there's -- I don't think 16 there's any fundamentally new opinions, other than, 17 you know, additional new discussion and analysis of 18 his new -- of his new materials. 19 Q. Between your report in Weaver, and 20 your second rebuttal report in Reitman, Exhibit 1, 21 are there any different opinions about 22 Dr. Krosnick's Pentobarbital survey and report in 23 these two reports? 24 A. No. 25 Q. Since the time that you offered
1 far as I know, introduce anything new. 2 Q. All right. 3 So, you're not offering any new 4 opinions in your second rebuttal report, Exhibit-1, 5 regarding Dr. Krosnick's first survey and first 6 report in terms of the diminution in value survey? 7 A. That's correct. 8 Q. And you're not offering any new or 9 different opinions about Mr. Weir's initial report 10 in Reitman. 11 Is that right? 12 A. I think, generally, that's right. 13 Q. Okay. 14 I guess with the understanding of 15 what you say about his supplemental report, right, 16 tangentially implicates that first report? 17 A. Yeah. That's the extent of it. 18 Q. And then in Exhibit-2, which is 19 your report in the Weaver case, are you offering any 20 new opinions in that report regarding Dr. Krosnick's 21 first survey and first report? 22 A. So, I would not say it's a new 23 opinion. There is definitely some new analysis that 24 supports the existing opinions, and so, that's in 25 there.	1 your opinions in Reitman, which I believe was 2 May 13, 2019 -- 3 Does that sound right? 4 A. Yes. Yes. 5 Q. Okay. 6 A. That's correct. 7 Q. Okay. 8 A. That's right. 9 Q. -- have you reviewed any additional 10 documents to support your opinions in Exhibits-1 and 11 2? 12 A. So -- so, yes. In most cases it is 13 reviewing just newer versions of things that already 14 existed in the Weir report, the Krosnick report, the 15 new Complaints. 16 In terms of additional information, 17 there is -- in the Weaver report some of the sources 18 had to change because they are no longer available, 19 and so, those were updated as well. 20 So, that I don't know if I -- 21 they're Websites. I don't know if I consider them 22 documents, but they're -- that was something else 23 that is also new. 24 Q. And when you say "sources had to 25 change," you mentioned Websites, do you mean, like,

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1 you Goggled something and that Website no longer
2 existed?
3 **A. Yes. It was -- yeah, it was**
4 **regarding the prices.**
5 Q. Okay.
6 **A. So, some of the sources we used for**
7 **the prices no longer had the prices for those**
8 **products available. So, those were updated.**
9 **But I think -- I think that is the**
10 **extent of it. It is just simply updating -- it**
11 **updating the document references, and, you know, the**
12 **reports, the other case material, and so forth to**
13 **the current state in the case.**
14 Q. Did you receive any additional
15 documents from Champion that you reviewed related to
16 your opinions in Exhibits-1 and 2?
17 **A. I don't think so.**
18 Q. Between the time of your first
19 report in May of 2018, and today, did you review any
20 additional deposition testimony in this case, and by
21 that I mean, Weaver or Reitman?
22 (Pause)
23 **A. I don't believe so.**
24 Q. Between May 13 of 2019, and today,
25 did you speak with anyone at Champion about this

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1 case?
2 **A. It would have been in the**
3 **July/August timeframe this year. I think the first**
4 **work was in August, but I think I had been made**
5 **aware of it. Things were coming in probably about a**
6 **month before. I don't know exactly when, though.**
7 Q. Was your assignment in the Weaver
8 case the same as your assignment in the Reitman
9 case?
10 **A. My understanding that it was**
11 **basically the same.**
12 Q. Did anyone deliver the work that
13 you could do in the Weaver case to support your
14 case?
15 **A. No.**
16 Q. Did you ask for anything in the
17 Weaver case to support your opinions that was not
18 given to you?
19 **A. So, there was -- I revisited the**
20 **question of whether or not there is any retail**
21 **pricing information available.**
22 **My understanding is, it continues**
23 **to not be available. So, that was the one document**
24 **request I had, and there was nothing to be used.**
25 **So, that was the only one.**

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1 case, either by phone or in writing?
2 **A. I didn't speak with anybody**
3 **directly at Champion.**
4 Q. Did you have any staff assisting
5 you with researching and drafting your reports
6 Exhibits-1 and 2?
7 **A. Yes.**
8 Q. And where -- who employs those
9 staff?
10 **A. They are employed by Cornerstone**
11 **Research.**
12 Q. Do you know whether anyone at
13 Cornerstone Research that you worked with spoke or
14 communicated with anyone at Champion during the time
15 of your first report, and these reports?
16 **A. I don't know.**
17 (Pause)
18 Q. When were you retained in the
19 Weaver case?
20 **A. I don't recall whether there was a**
21 **formal retention or I just considered it an**
22 **extension of the existing one.**
23 **So, I -- I actually don't know.**
24 Q. When did you become aware that you
25 were going to issue expert opinions in the Weaver

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1 Q. Did your staff or you do any
2 additional research to determine if that retail
3 pricing information was available from a source,
4 other than Champion?
5 **A. So, I -- I asked my research staff**
6 **to explore whether or not there was anything that**
7 **might be available.**
8 **I -- I think it was mostly directed**
9 **at Champion, but they -- they may also have done**
10 **some additional work to see if it was readily**
11 **available, but there was nothing -- nothing that**
12 **they were able -- able to obtain.**
13 Q. Were any budgetary restrictions
14 placed on you as far as work that you could do in
15 the Weaver case?
16 **A. No.**
17 Q. So, no one prevented you from doing
18 what you thought was the best work you could do as
19 an expert in the Weaver case?
20 **A. That's correct.**
21 ---

22 (At which time a Rebuttal Expert
23 Report of Lorin M. Hitt, May 13, 2019, was
24 received and marked as Deposition Exhibit
25 Hitt-3 for identification by the court

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1 reporter.) 2 --- 3 CONTINUATION 4 BY MS. BORRELLI: 5 Q. Just for reference, I am going to 6 hand you Exhibit-3, which is your rebuttal report in 7 Reitman from May. 8 Just take a quick look. 9 Confirm it is what I say it is. 10 (Pause) 11 A. Looks correct. 12 Q. All right. 13 And I will say, it is just the body 14 of your report. I didn't add any of the exhibits, 15 attachments, et cetera, or do you have the whole 16 thing? 17 A. I have -- I have a CV as well. 18 Q. All right. Excellent. 19 A. So -- I think this is the whole 20 thing. 21 Q. All right. 22 I don't have it, so better you. 23 Okay. 24 MR. KESSLER: Do you want a copy of 25 it?	1 this -- this reflects my opinions as -- as of this 2 time. 3 Q. And does Exhibit-2 contain all of 4 the bases and reasoning for those opinions in 5 Weaver? 6 A. Yes. Excuse me. 7 Q. Did you review your deposition 8 transcripts from May taken -- I think it was May -- 9 taken in the Reitman case? 10 A. Yes. 11 Q. Beyond anything that you may have 12 indicated on your errata sheet, do you have anything 13 to change from that testimony? 14 A. Not -- no. 15 Q. So, you stand by everything you 16 said in your deposition that day? 17 A. Yes -- 18 Q. Okay. 19 A. -- with -- with the changes to 20 sound a little more correct -- 21 Q. Yeah. 22 A. -- but that was -- that was -- that 23 was, yes. 24 Q. What did you do to prepare for your 25 deposition today?
Page 16	Page 18

1 analysis. 2 Q. Okay. 3 When you say you "spoke with 4 counsel," when was that? 5 A. I believe counsel was on the phone 6 when I spoke with my research team last -- was it 7 Friday, and then we had a discussion yesterday. 8 Q. Did you review Dr. Hanssens' two 9 new reports, one in Reitman and one in Weaver? 10 A. Yes. 11 Q. And did you review those prior to 12 finalizing your reports, Exhibits-1 and 2? 13 A. Yes. I believe I had a final or 14 near final copy of those that I reviewed before we 15 executed the report. 16 Q. In your opinions in Exhibits-1 and 17 2, do you rely on any of Dr. Hanssens' opinions to 18 support your opinions? 19 A. Yes, in the same way as before, 20 plus he did more -- a deeper dive on the 21 Pentobarbital survey. So, I'm aware of those. 22 I believe I cited him for those, 23 but I relied on him for that extended analysis, but 24 mine had more restrictions on that. 25 Q. So, where you cite to Dr. Hanssens	1 experts in this case? 2 A. No, other than Mr. Weir, 3 Dr. Krosnick and Professor Hanssens, that is the 4 extent of the reports that I have reviewed. 5 Q. Was anything then added to your CV 6 since your last deposition in May? 7 A. Probably on the margin; teaching. 8 I -- I -- I update it continuously. So, without 9 doing a Red line, I'm not sure. 10 Teaching has been updated. 11 There is a new working paper that 12 we are circulating around that is -- that is 13 definitely on the list. 14 Things may have progressed from 15 being in press to published, but I don't think there 16 is anything else that I recall directly that is 17 changed in the last few months. 18 Q. Are any of the papers or 19 publications that are forthcoming or you're working 20 on related to survey design or survey analysis? 21 A. Not survey design. 22 I don't think so. 23 Q. And have you taught any courses 24 since May related to survey design or survey 25 analysis?
Page 20 1 in Exhibits-1 and 2, is it fair to assume that those 2 are the areas in which you rely on his opinions? 3 A. Yes, that's correct. 4 Q. Did you agree with all of 5 Dr. Hanssens' opinions in his two new reports; one 6 issued in Reitman and one issued in Weaver? 7 A. I -- I did not read them with a -- 8 with an eye towards whether I agree or disagree. 9 I -- my understanding is, I agree 10 with the points which I referenced, and it appears 11 broadly consistent with my understanding. But, 12 again, I didn't do any kind of line-by-line 13 analysis, other than the specific -- the specific 14 items that I -- I cited. 15 Q. Did you review any other expert 16 reports issued since your May report to form your 17 opinions in Exhibits-1 and 2, either from the 18 Plaintiffs or from the Defendants? 19 A. So, the -- I think Weir has -- has 20 a rebuttal report which I am responding to, and I 21 also reviewed the -- the new Weaver and Krosnick 22 reports, the extended Krosnick report, and the new 23 Weaver report in -- in preparation for these. 24 Q. So, you don't recall reviewing any 25 of the reports from what I will call the liability	Page 22 1 A. It would have been the same as -- 2 as before. I am teaching my analytics class now. 3 Q. Okay. 4 A. But that's the only thing that 5 would have changed. 6 Q. Has any -- have any cases been 7 added to your list of items since May of 2019? 8 A. Yes. 9 Q. Okay. 10 Which cases are those? 11 A. They will be on the back page, and 12 there should be two. One is Dolby, and one is 13 HedgeServ. HedgeServ is support -- reporting 14 depositions. 15 Q. Can you tell me what the HedgeServ 16 case is about? 17 A. That's pending, so a lot of that is 18 confidential. It is a contract dispute between a 19 software vendor and a district software distributor. 20 Q. Obviously not asking you to violate 21 any Protective Orders. 22 Are you able to tell me at all what 23 sorts of opinions you are offering in that case or 24 generally -- 25 A. Yes.

1 Q. -- what you have been asked to do? 2 A. I can -- it's generally in the 3 realm of pricing. It is -- it is a dispute over 4 pricing. 5 Q. And what is the Dolby case about? 6 A. That is a dispute over an 7 intellectual property licensing agreement. 8 Q. Again, without violating any 9 Protective Orders, can you tell me, generally, what 10 -- what your assignment is in that case? 11 A. It is addressing economics and 12 pricing, and there are some business practice issues 13 regarding sort of common practices in the software 14 industry. 15 Q. So, is it fair to say that neither 16 of those cases involve you providing any opinions 17 about survey evidence or analysis? 18 A. Yes, I believe that is correct. 19 Q. Okay. 20 And since we last spoke in May, 21 have you designed any surveys? 22 A. Nothing finished. 23 We are beginning to work on some 24 updates to one of my previous papers. It is in 25 preliminary stages right now.	1 says you were asked by counsel for Champion to 2 review and respond to the Weir Supplemental Report 3 and the Second Krosnick Report. 4 Can you be a little more specific 5 about what your assignment was with respect to those 6 two reports? 7 A. I think that actually captures it 8 pretty well, which is to review these, and see if I 9 have any, either additional opinions that would be 10 related to those reports, or if I had any issues 11 with the information that was presented in those 12 reports. 13 So, it was intended to focus 14 specifically on those, and the -- the changes 15 relative to the previous ones. 16 Q. Okay. 17 So, there was no limitation put on 18 you to look at the economic issues in those two 19 reports. It was just, "look at those reports and 20 let us know what you think"? 21 A. It was within the same scope of the 22 questions I was asked before, yeah. Focus on the 23 economic issues, and to the extent it feeds into the 24 opinions about market prices, and -- and the same -- 25 it's basically the same assignment as I had in the
Page 24	Page 26 1 previous report focused on these two supplements. 2 Q. Your first opinion in this report 3 is on page two, starting in paragraph nine. 4 You say that Dr. Krosnick's 5 Pentobarbital Survey does not support Mr. Weir's 6 estimation of damages. 7 Is -- is it fair to characterize 8 this opinion as just saying that the Pentobarbital 9 Survey was not used by Weir to calculate the illegal 10 sales damages? 11 A. I think that's one of two things I 12 would say. 13 One; he doesn't actually use it, 14 and two; because it doesn't address willingness to 15 pay or pricing or anything that would lead to a 16 quantification of damages, I don't think he could 17 have used it for his calculations. And so, that is 18 -- that's the second opinion, but that's -- that's 19 the scope of it. 20 Q. Okay. So, I just want to make sure 21 I am clear. 22 Your two opinions here are; number 23 one; Mr. Weir doesn't use the Pentobarbital Survey 24 at all in his legal sales damages calculation. 25 Is that right?

1 A. That's correct. 2 Q. And number two is that; regardless 3 of that fact, Mr. Weir -- I'm sorry -- that the 4 Pentobarbital Survey doesn't address willingness to 5 pay or diminution of value, thus it cannot be a used 6 to determine damages anyway? 7 A. At least within the framework 8 Mr. Weir is using it, that is -- that is fair. 9 Q. All right. 10 What is your understanding of the 11 Plaintiff's claims regarding Pentobarbital in the 12 both Reitman and Weaver -- 13 A. So -- so, my general -- well, I -- 14 I -- 15 Q. -- at least as far as damages? 16 A. As far as damages, I -- I think my 17 understanding is -- is broadly that; Mr. Weir 18 basically contends that the sales were illegal, and, 19 therefore, the -- it would be that his -- his 20 damages model is based on the total refund of all 21 sales of those products that could be allegedly 22 contaminated. 23 That is pretty much my 24 understanding. 25 Q. If we accept that period of	1 MR. KESSLER: Object to form. 2 I think you're asking for a legal 3 conclusion. 4 THE WITNESS: Yeah. 5 So -- so -- so what I can say is -- 6 is; given the way Mr. Weir has done the calculation 7 and what his -- his -- his claim of the appropriate 8 rate to compute damages is, he does not require 9 willingness to pay on that because he's got a full 10 refund. 11 I didn't do an evaluation as to 12 whether or not a different methodology would 13 actually be appropriate, but certainly if 14 conditional on using his method, it doesn't require 15 diminution of value. 16 (Pause) 17 THE WITNESS: And when I mean "his 18 method," I mean the illegal sales damage. Not 19 supporting him, the method he used for the other 20 statements. 21 - - - 22 CONTINUATION 23 BY MS. BORRELLI: 24 Q. And your second opinion in 25 Exhibit-1 is that, Mr. Weir's corrections to his
1 liability as true, and let's say that Plaintiff's 2 prove that, is it your opinion that Plaintiff's 3 would still need a survey showing willingness to pay 4 just for back damages period -- 5 MR. KESSLER: Object to the form. 6 THE WITNESS: So, if -- if, 7 ultimately, the calculations says all of the -- it 8 only requires these sales, doesn't require 9 diminution of value, then you don't need that survey 10 input into it. But then, he also doesn't use it for 11 what he does do. 12 So, I don't see the connection 13 between that survey and the actual damages 14 calculation even when he did do it. 15 - - - 16 CONTINUATION 17 BY MS. BORRELLI: 18 Q. Okay. So, I just want to make sure 19 I understand. 20 You would agree that if Plaintiff's 21 showed that had those -- the sales of those products 22 that may have been contaminated with Pentobarbital 23 were illegal, then Plaintiffs would not need a 24 willingness-to-pay type survey to support those 25 damages?	1 damages measures do not address most of the 2 criticisms in your initial report, and, therefore, 3 his damages calculation remains unreliable. 4 Is that right? 5 A. I -- I think that's right. 6 But the only thing I would modify 7 slightly is that, it is not so much a calculation 8 issue as a separate, you know, the implementation 9 calculation part from the conceptual part, but I 10 disagree with the conceptual framing of his 11 analysis, and that's most -- I don't think he 12 responded to any of those issues. 13 The calculation issue he 14 addressed -- he addressed some of those. 15 Q. Okay. 16 So, is his opinion, basically, 17 saying that Mr. Weir's supplemental report just 18 addresses the calculation errors, but none of your 19 other criticisms of his general methodology? 20 MR. KESSLER: Form. 21 THE WITNESS: I think that is 22 actually -- let me just hear that again, make sure I 23 -- 24 - - - 25 (At which time the following

1 **So, we -- you know, my analysis --**
2 **my analyst team went through and made all those**
3 **corrections for where we identified prices that were**
4 **not correctly attached to products.**

5 **Some of those were positive.**
6 **Some of those were negative.**

7 Q. Did you identify those ones that
8 are positive in your report?

9 **A. Yes. They're -- they're mentioned**
10 **in the Footnote 2 of Table 1.**

11 Q. I'm sorry.

12 Can you show me where?

13 I'm not seeing where you say you
14 identified incorrect product price that increased
15 damages.

16 **A. So, it is -- it is -- it doesn't**
17 **say which ones increase and which ones did not**
18 **increase.**

19 **So, let me just go through it**
20 **line-by-line, and I will find the ones.**

21 (Pause)

22 **A. Oh, okay. That -- that did not**
23 **apply here. I don't think --**

24 (Pause)

25 **A. Let me make sure.**

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1 **I may be mixing up the two reports.**
2 (Pause)

3 **A. Let me just check something real**
4 **quick. Let me just see if I am recalling them**
5 **correctly.**

6 (Pause)

7 **A. So, that -- the methodology I**
8 **described is correct.**

9 **Whether or not that applied to both**
10 **reports, I have to check that.**

11 (Pause)

12 **A. Oh, okay. Yes. Sorry.**

13 **I misspoke on that.**

14 **The statements I made about**
15 **methodology are correct.**

16 **In terms of Reitman, those**
17 **corrections are all in one direction.**

18 **In the Weaver report there is a**
19 **correction in the opposite direction.**

20 Q. Okay.

21 In yours and your team's analysis
22 of Dr. -- I'm sorry -- Mr. Weir's calculations, did
23 you identify any errors at all that would have
24 increased damages in Reitman?

25 **MR. KESSLER: Object to form.**

1 **THE WITNESS: I don't believe we**
2 **identified any that would have increased damages in**
3 **that one.**

4 We focused principally on pricing
5 ones, and in that one all went one direction. But
6 in the other case, went both directions.

7 ---

8 **CONTINUATION**

9 **BY MS. BORRELLI:**

10 Q. So, if you had, for instance, any
11 errors that would increase damages, would you have
12 identified those in your report?

13 **MR. KESSLER: Same objection.**

14 **THE WITNESS: To the extent they --**
15 **they were -- we found errors in the -- in the things**
16 **we reviewed, again, we did not attempt to replicate**
17 **it completely.**

18 We focused on the areas where we
19 thought there might be potential error. So, we
20 would have corrected them in both directions if we
21 found them.

22 ---

23 **CONTINUATION**

24 **BY MS. BORRELLI:**

25 Q. So, what areas were you focusing

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1 on?

2 **A. Price matching.**

3 **That's the main one where there is**
4 **a potential, because the source data is what it is.**
5 **There's an issue about proper**
6 **matching of prices. That's where there's a lot of**
7 **potential for problems.**

8 Q. Is that because there's some
9 ambiguity in the data as far as product names?

10 **A. I think that's part of it.**

11 Q. And in your view is some of that
12 open to interpretation, the data?

13 **A. So -- so, let me separate it in two**
14 **pieces.**

15 **There were judgment -- one; there**
16 **is -- there are judgment calls to be made.**
17 **But two; there is a methodology**
18 **that Mr. Weir articulated for making those judgment**
19 **calls. And so, in some cases he is inconsistent**
20 **with that methodology.**

21 **So, there is ambiguity but there's**
22 **also inconsistencies, and those are -- are ones I**
23 **identified.**

24 Q. Did you reach out to anyone at
25 Champion, by either you or your research team, where

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1 you had questions about which products matched with
2 which parts of the data?
3 **A. I don't know of any instances where**
4 **that was the case, but I -- I -- I don't know for**
5 **certain.**
6 Q. Okay.
7 And with respect to the illegal
8 sales damages, you have similar opinions, correct,
9 with respect to the time period and the market
10 pricing.
11 Is that right?
12 **A. Yes, they are -- they are basically**
13 **the same kinds of issues.**
14 Q. So, would you agree that if the
15 pre-October 2016 sales were taken out, and the
16 packaging price adjusted, that Mr. Weir's
17 calculations would mathematically be correct
18 according to his methodology?
19 **A. According to his method, and**
20 **reasonable assumptions that it could not have**
21 **started before October of 2016, I think that would**
22 **be correct.**
23 **There is this issue that it is**
24 **uncertain when the contaminated tallow entered into**
25 **the actual product, which might change that date**

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1 **on that.**
2 Q. So, as you just mentioned a minute
3 ago, and as stated in your report in Paragraph 18,
4 you "understand from counsel that Champion did not
5 begin purchasing the beef tallow from the supplier
6 at issue until October of 2016".
7 Did you provide any documentation
8 about that issue or just asked to assume that that
9 was the case?
10 **A. Somewhere -- so, there was -- I**
11 **don't have any documentation of that. My research**
12 **team reached out, and said when -- which packages**
13 **and when would this -- this -- the allegedly**
14 **contaminated tallow product enter the -- you know,**
15 **the production stream, and this was the -- this is**
16 **what we were provided by counsel.**
17 Q. And then in Paragraph 19 you say;
18 "even using October 2016 as a start date is overly
19 inclusive, because I understand that the beef tallow
20 that tested positive for Pentobarbital was delivered
21 to Champion in March, 2018."
22 What is the basis for that
23 understanding?
24 **A. So, the basis of that understanding**
25 **is to -- to the report. I believe there is a --**

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1 **further, but we have no information about that.**
2 **So, this was the, I think, the**
3 **correction of things that are clearly at issue.**
4 **There could be other corrections that would be**
5 **appropriate, if -- if more information became**
6 **available.**
7 Q. And in Footnote 20 on page five,
8 you say, "regardless of the errors and
9 miscalculations, I feel that Mr. Weir provides no
10 economic basis for his full refund illegal sales
11 damages".
12 What do you mean by that?
13 **A. At least my understanding of his**
14 **argument is that this is a legal issue; that there**
15 **-- if they are illegal, then the sales are illegal,**
16 **and it's full refund.**
17 **There is not an economic analysis**
18 **that is supporting that. He is relying on the legal**
19 **argument that these were, indeed, illegal sales.**
20 Q. What sort of economic analysis
21 would you find reasonable to support the full
22 refund?
23 **A. That's not something I considered.**
24 **So, I don't know. He -- it depends on the**
25 **circumstances, and I didn't do any further analysis**

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1 **it's cited in -- in 23. In personal discussion with**
2 **counsel on the dates from before, but the -- the**
3 **documents that support that date is the testing**
4 **document or the -- I would have to look at it**
5 **exactly to have it correct. There was a letter that**
6 **was sent that said, basically, it was tested for --**
7 **positive for Pentobarbital.**
8 Q. So, beyond that document cited in
9 Footnote 23 under conversations with counsel, did
10 you review any other materials that supported your
11 opinions about the proper start date for the illegal
12 sales damages?
13 **A. No, that is -- that is -- and that**
14 **is why we used the October 2016 date as the**
15 **reference point. We don't have further information**
16 **that would refine it, but I do note that the actual**
17 **testing date it does postdate it.**
18 Q. If we turn to the Weaver report,
19 which is Exhibit-2.
20 Was your assignment in the Weaver
21 case any different than your assignment in the
22 Reitman case?
23 **A. No. My understanding was that the**
24 **assignments were -- were the same.**
25 Q. Were you asked to do anything

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<p>1 constant and looking at one across the other, and 2 holding or looking at both simultaneously. 3 (Pause) 4 Q. You say, "the fact that Respondents 5 of Dr. Krosnick's survey do not behave in a manner 6 consistent with rational economic behaviors suggests 7 that the survey is unreliable". 8 You use the word "suggests" there. 9 Is there anyway to verify that the 10 survey is unreliable for this reason? 11 A. I think this would be -- be 12 evidence that that's the case. There is -- there is 13 no absolute certainty in anything, but the -- the 14 idea -- one of the standard tests you typically will 15 do when analyzing economic data is to see if the 16 Respondents behave in what would be consistent with 17 the underlying theories you were using for the 18 analysis, and, you know, price -- behavior of prices 19 inconsistent with known economic behavior which 20 would typically violate that. 21 There are many reasons why that 22 occurs, but what it says is that the survey is not 23 able to replicate expected behavior, and, therefore, 24 it could be unreliable. 25 Q. In between May of 2019, when you</p>	<p>1 proposition? 2 A. It's not something you would 3 typically cite. 4 I served as a Department Editor of 5 the leading journal in our field for five years, and 6 this is pretty typical of what you would see in a 7 published academic work, as you tabulate the data 8 first to see if it is consistent, and then -- then 9 you move on to something more complicated. 10 If it fails this test, then you 11 probably need to revise your model or your data or 12 both. 13 Q. What journal is that? 14 A. Management Science. 15 Q. Is that an economic stream or 16 business type journal? 17 A. It's a little of both. It is a lot 18 -- there are lot of economic analysis, yeah. 19 Q. In Footnote 76 on page 22 you say 20 that "this analysis applies equally in Reitman." 21 When did you receive the data you 22 needed to do the analysis in this section of your 23 Weaver report? 24 A. I have had this since the 25 beginning, since this is based on Dr. Krosnick's</p>
<p>Page 48</p> <p>1 issued your initial report in Reitman and now, did 2 you design or conduct any survey as part of your 3 work in this case -- 4 A. No. 5 Q. -- Weaver or Reitman? 6 A. No, no additional. I did not 7 design any surveys in this case. 8 (Pause) 9 Q. So, is this sort of test looking at 10 the price behavior of Respondents, is that a 11 standard statistical testing of reliance in the 12 economic community? 13 A. So, it is a standard practice, and 14 in pretty much all scientific work that you tabulate 15 data to see if it is consistent with your theory 16 before you employ more complicated models, because, 17 ultimately, when you start deploying models on data, 18 you have to be able to distinguish the things that 19 are actually being caused by the data from things 20 that are being caused by assumptions in the models. 21 So, this would be a standard thing 22 that you would do at the beginning of any analysis 23 to see if the survey data or the data source, 24 whatever it is, is broadly consistent with -- 25 Q. Do you have a citation for that</p>	<p>Page 50</p> <p>1 original survey data production. 2 Q. So, since approximately April of 3 2019. 4 Does that sound right? 5 A. It's in that timeframe, yes. 6 Q. So, you could have done this 7 analysis in your initial Reitman report? 8 A. Yes. 9 Q. Were you asked to do this 10 additional data analysis for Weaver? 11 A. No. 12 Q. It's just something you chose to 13 do? 14 A. It is something I chose to do that 15 I had been thinking about ways of looking at this 16 data, because the model, you know, as I have 17 mentioned in my previous deposition and my previous 18 report, the characteristics from the model I find 19 strange and unusual. And so, I was thinking of ways 20 where you could examine whether the underlying 21 effects are true without having to rely on -- model. 22 I've been thinking about it for a while, and it 23 seems to be the best way to do it. 24 MS. BORRELLI: Could we go off the 25 record?</p>

1 VIDEO TECHNICIAN: The time is now 2 10:02 a.m., and we are going off the record. 3 - - - 4 (Recess was taken at this time.) 5 - - - 6 VIDEO TECHNICIAN: Stand by. 7 The time is now 10:11 a.m. 8 This is the beginning of tape 9 number two, and we are back on the record. 10 - - - 11 CONTINUATION 12 BY MS. BORRELLI: 13 Q. Okay. 14 Dr. Hitt, we are talking about your 15 opinions in the Weaver report, Exhibit-1, starting 16 on page -- I'm sorry -- Paragraph 56. 17 A. Okay. 18 Q. I think we discussed this in your 19 prior deposition, but can you remind me. 20 How do you define statistical 21 significance? 22 A. Yeah. I -- I -- we -- we -- we did 23 discuss this last time. 24 It is -- it is, again, what 25 statistical significance, it only has to be against	1 are statistically significant? 2 A. So, I wouldn't say it that way. 3 Again, it depends on the comparison 4 you have. If you -- if you want to compare two of 5 them, you can do it by looking whether or not the 6 confidence intervals overlap. 7 If you want to do more than two, 8 there is more calculation you need to do. 9 Q. I just want to make sure I 10 understand. 11 I'm looking at Figure 1, the title 12 "Base Price" in the left. 13 A. Yes. 14 Q. So, let's say we look between two 15 and three corrective statements. If I can draw a 16 line there showing that those confidence intervals 17 overlap. 18 What does that tell you? 19 A. That tells you that those aren't 20 statistically different, but you can distinguish 21 them from being the same. 22 Q. Again, what does that -- so, what 23 does that mean with respect to this data that you 24 are showing here in Figure 1? 25 A. So -- so -- so, what it says is, is
Page 52 1 a similar hypothesis. 2 So, it's a typically stated reasons 3 different, but you have to have the alternate to 4 specify. 5 Q. And did you do any tests of 6 statistical significance of the data that your 7 report in Table 4, as well as in Figure 1 in the 8 attached Appendices? 9 A. So, not explicit tests, but the 10 charts have the confidence intervals, and so, if you 11 wanted to do the comparison of whether or not, for 12 example, moving across Figure 1 where those 13 statements are different, you can look to see 14 whether or not the confidence intervals overlap, and 15 if they do, they won't be statistically different. 16 Q. And you did not do that test of the 17 data in Figure 1, and then the Appendices with the 18 similar confidence intervals? 19 A. The confidence intervals are all 20 there. So, you can read the test off of the chart, 21 but I didn't do a separate calculation of that 22 statistic, no. 23 Q. So, if I look at Figure 1, are you 24 telling me if I can draw a line across all of those 25 and the confidence intervals overlap, the results	Page 54 1 that, for example, you can't distinguish the effect 2 statistically between the number between two and 3 three statements if you wanted to make that 4 interpretation. 5 The primary presentation of the 6 graph is just showing the -- is it -- those are on 7 there primarily to show how wide confidence 8 intervals are on -- on the ends, and also to show 9 the Plaintiffs' analytics are a little hashmark in 10 the beginning shows that those don't show any 11 particular pattern either. 12 Q. You pointed out the two on the 13 ends. 14 What are the sample sizes that's 15 contributing to those numbers? 16 A. Off the top of my head, I don't 17 know, because these are segmentations, but they are 18 very small. 19 Q. Can you get reliable information 20 from such a small sample? 21 A. Generally, no, and that's one of 22 the -- well, you -- you get -- it's what it is. You 23 get a very, very wide confidence interval, and that 24 is one of the problems with the approach 25 Dr. Krosnick took, at least in -- at least in the

1 focus on seven and eight corrective statements,
2 because that relies -- he observed data at those
3 levels is actually a very small sample.
4 And especially -- that's especially
5 true for eight where the samples are extremely
6 small.

7 (Pause)

8 Q. So, your analysis in Table 4, that
9 is based on the raw data from Dr. Krosnick's
10 surveys.

11 Is that right?

12 A. Yeah, that is correct. That is --
13 that is taking all the data that would have entered
14 into his regression, and not distinguishing between
15 the two packaging -- the randomization of the two
16 packages.

17 So, that would have been the full
18 sample that -- that was the basis of his regression.

19 Q. And I'm not sure I asked this in --
20 in your prior deposition, but remind me.
21 Do you disagree with Dr. Krosnick's
22 math in the regression he ran and/or do you disagree
23 with the theory?

24 A. If I believe that he implemented
25 the method he described. The -- the -- what he did

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1 regression of some sort to determine -- to figure
2 out your data to whatever model you are looking at?
3 MR. KESSLER: Objection to form.
4 THE WITNESS: That's -- that's kind
5 of a hard thing to -- to say generally appropriate,
6 because saying you are using regression is kind of
7 like saying you are using math.
8 It is a huge family of techniques,
9 and so, the -- the -- it is appropriate to use a
10 model, and one of the ways in which you can estimate
11 a model is by regression.

12 And there is hundreds of different
13 kinds of regression, too. So, that's extremely
14 general.

15 - - -

16 CONTINUATION

17 BY MS. BORRELLI:

18 Q. Okay.
19 So that it is standard practice to
20 take your data and put it in some sort of a model of
21 some sort to look at it.
22 Is that a fair and general
23 characterization?

24 A. There is -- there is a number of
25 different things you can do.

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1 is consistent with the way he described it.
2 So, from that perspective, yeah, he
3 did the math based on what he was doing. Whether
4 that is the right analysis he did, that is -- that
5 is a separate issue.

6 (Pause)

7 Q. And, in general, when you are
8 looking at survey data, what's the purpose of
9 running a regression as opposed to simply looking at
10 the raw data?

11 A. It depends on what conclusion you
12 are trying to draw.

13 Q. If you are trying to determine a
14 diminution in value percent, what is the purpose in
15 doing a regression versus looking at the raw data?

16 A. I think that is too general to
17 answer precisely.

18 You would use regression to
19 estimate some form of model. If you were trying to
20 estimate -- if that model was what you were going to
21 give you something that you needed, that's -- that's
22 one of the reasons you use regression, but there are
23 other techniques as well.

24 Q. But you would agree it is common
25 practice and generally appropriate to use the

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1 You can do tabulations.
2 You can do model estimation.
3 You can do machine learning, which
4 is slightly different way of modeling.
5 All sorts of things you can do, but
6 people do all sort of things and typically in that
7 combination.

8 (Pause)

9 Q. You may have said this already.

10 I am sorry if I missed it.

11 What does the -- what does a
12 confidence interval tell you?

13 A. Without being, you know, overly
14 technical.

15 If you, basically, did the same
16 experiment again with a 95 percent -- the 95 percent
17 confidence levels, if you did the experiment again
18 from scratch with 95 percent probability, you'd get
19 an answer that lies within that confidence interval.

20 That is a sort of, I think, the
21 best casual way to express it.

22 You can express it in terms of
23 distribution as well, but that's basically the same
24 thing with more math.

25 Q. And are there different ways to

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1 calculate confidence intervals?
2 **A. Yes, because they rely on certain**
3 -- **they rely on certain assumptions.**
4 Q. What methodology did you use to
5 calculate the confidence intervals in your Weaver
6 report?
7 **A. These are what are referred to as**
8 **Clopper-Pearson, and it is -- most of the methods**
9 **show similar results.**
10 There is a -- with all confidence
11 intervals for buying and distribution, in
12 particular, you have issues regarding the time, the
13 fact that there's a discrete number of levels, and
14 so, we are -- what to do when you fall between them,
15 these different methods treat that value
16 differently, but these are Clopper-Pearson.
17 Q. And did you --
18 **A. Oh, sorry.**
19 Q. Did you attempt to calculate
20 confidence intervals in using any other methodology?
21 **A. Yes. I believe we also computed**
22 them using the Jeffreys Bayesian technique. They
23 basically look the same.
24 I don't think there is any
25 conclusion I would draw that would differ between

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1 Q. -- to show --
2 **A. For -- I'm sorry.**
3 **So, one is, I think this is -- is a**
4 **good visual presentation that the estimates,**
5 **particularly at the end of the sample, are very**
6 **precise. So, this is one way to look at it.**
7 So -- so, that's one.
8 The second is to just illustrate
9 that the -- there is a fair amount of variation, and
10 that that variation typically is well within the
11 confidence bands between corrective statements.
12 So, it is very hard to conclude,
13 based on this tabulation of data that there is any
14 particular pattern, not just a systematic one of
15 declining -- declining in the number --
16 Q. And did you do this analysis of the
17 data for each product that was used in the survey
18 separately as well?
19 **A. Yeah. There is -- there is three**
20 **dimensions upon which the randomization was done in**
21 **Krosnick's analysis, Dr. Krosnick's analysis.**
22 One is the number of -- number of
23 -- prices were randomized, number of statements was
24 randomized, and then the two products were
25 randomized.

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1 those two methodologies. Those are the two more
2 common ones. There is probably six or eight more.
3 Q. Did you produce the results of the
4 Jeffreys Bayesian confidence intervals that you ran?
5 **A. I -- they may be in the backup.**
6 They don't appear -- the -- the ones on here, the
7 Clopper-Pearson ones.
8 The ones that appear in the report,
9 I do not recall if they related to the backup
10 documents or not.
11 Q. Could we have those, please?
12 **A. I think it's one -- adding one line**
13 **to --**
14 Q. Okay.
15 **A. -- this data --**
16 Q. Okay.
17 **A. So, these are enough to produce.**
18 Q. Oh, all right.
19 (Pause)
20 Q. And, again, just -- you may have
21 said this, but just so I understand it.
22 For what purpose did you calculate
23 the confidence intervals in Figure 1 and in the
24 exhibits attached to Appendix 4 in your report --
25 **A. For --**

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1 **So, there is every combination of**
2 **that. So, the extended number of charts in the back**
3 **are each product, each price level, number of**
4 **corrective statements.**
5 Q. When you break it down by each of
6 those variables, were the results that you received
7 consistent?
8 **A. You get the same basic**
9 **observations, which is that they seem to vary**
10 **considerably, and they typically are not distinct.**
11 **The contrast between the number of corrective**
12 **statements are not typically outside of each other's**
13 **confidence intervals, and that is more of a general**
14 **-- general observation that, you know, these charts**
15 **basically look very similar.**
16 Q. Okay.
17 **A. There are some variation across**
18 **them, but they look generally similar.**
19 Q. Look at the paragraph on page 24.
20 **A. (Witness complies.)**
21 Q. Towards the end of that paragraph
22 you say -- there is a sentence that starts, "in
23 fact, there is no pattern at all apparent in the
24 data".
25 Do you see that sentence?

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<p>1 A. Yes.</p> <p>2 Q. And you say, "especially taking</p> <p>3 into account the statistical uncertainty in the</p> <p>4 percentages."</p> <p>5 Do you have a -- is there a journal</p> <p>6 or textbook you can cite in support of that</p> <p>7 proposition?</p> <p>8 A. It's basic standard technique to --</p> <p>9 to clock data, and when you do not see any visible</p> <p>10 pattern then, you know, I will show you what the</p> <p>11 data looks like. You can see that there is not a</p> <p>12 visual pattern there.</p> <p>13 Most data analytic textbooks</p> <p>14 encourage you to plot your data ahead of time just</p> <p>15 to see what the relationship are.</p> <p>16 That is pretty standard, and that's</p> <p>17 something that is almost always required when at</p> <p>18 least the places I published, both in the UK and in</p> <p>19 management. It is a pretty common thing to do.</p> <p>20 Q. In Footnote 80 on that page you say</p> <p>21 that, "Dr. Krosnick created indices based on control</p> <p>22 variables to include in his regressions. In theory</p> <p>23 such controls should not be necessary for his</p> <p>24 analysis or for the analyses in Table 4 and Figure 1</p> <p>25 here."</p>	<p>1 tests you can do, but that wasn't one of the issues</p> <p>2 that I was especially concerned about.</p> <p>3 (Pause)</p> <p>4 Q. Turn to page 29 of Exhibit-2,</p> <p>5 Paragraph 71.</p> <p>6 Based on my comparison, I believe</p> <p>7 that this paragraph was not included in your initial</p> <p>8 Reitman report, Exhibit-3.</p> <p>9 Does that sound right to you?</p> <p>10 A. That's correct.</p> <p>11 Q. And what -- what was the reasoning</p> <p>12 for including this paragraph here in Weaver and not</p> <p>13 in Reitman?</p> <p>14 A. So, I'm always thinking about ways</p> <p>15 to try to present the -- the same ideas in a</p> <p>16 simpler, more straightforward way that is more</p> <p>17 understandable.</p> <p>18 And so, given some -- given some</p> <p>19 more thought, this seemed to be potentially helpful</p> <p>20 in explaining why I believe what I believe about</p> <p>21 supply and demand.</p> <p>22 Q. And how do you define the "but-for"</p> <p>23 world as you use that term in this paragraph?</p> <p>24 A. So -- so, the but-for world as --</p> <p>25 as I would understand it in this context is that</p>
<p style="text-align: right;">Page 64</p> <p>1 What is the basis for that</p> <p>2 statement?</p> <p>3 A. Basic statistical theory.</p> <p>4 If you -- if you randomize</p> <p>5 properly, then it should also be randomized over the</p> <p>6 control periods, and so you shouldn't have to</p> <p>7 have -- in the end the contrast you draw in the data</p> <p>8 should not depend on those control variables.</p> <p>9 To the extent your randomization is</p> <p>10 imperfect, they might, but if you're truly -- if</p> <p>11 it's truly randomized, you shouldn't need the</p> <p>12 control variables to draw the contrast.</p> <p>13 (Pause)</p> <p>14 Q. Do you have any opinions about</p> <p>15 whether Dr. Krosnick's sample was properly</p> <p>16 randomized?</p> <p>17 A. So, the only -- I did do additional</p> <p>18 examination as to whether or not across these</p> <p>19 various groups the levels of control variables are</p> <p>20 randomized consistently, and they seem to be.</p> <p>21 So, as -- as -- as far as I could</p> <p>22 tell, there doesn't seem to be any issue, at least</p> <p>23 with these that -- that the -- the randomization was</p> <p>24 a problem.</p> <p>25 I didn't do the -- there are more</p>	<p>1 Champion would sell products with different labeling</p> <p>2 on it, and, you know, accepting the -- the -- the --</p> <p>3 if I accepted the Plaintiffs labeling, it would be</p> <p>4 with the corrective statements on it in some way.</p> <p>5 That's the natural "but-for" world that would be</p> <p>6 just accepting, you know, the Plaintiff's arguments.</p> <p>7 Q. So, the only thing that is</p> <p>8 different in the "but-for" world is that Plaintiff's</p> <p>9 corrective statements appear on the packaging on</p> <p>10 Champion products?</p> <p>11 A. Well, that would be the -- that</p> <p>12 would be the -- the -- the difference in the</p> <p>13 product, but then you have -- then have all the</p> <p>14 reactions that would cause, including the changes</p> <p>15 in, you know, whatever changes in equilibrium;</p> <p>16 price. Changes in supplier behavior. Champion.</p> <p>17 Changes in competitive behavior.</p> <p>18 That -- that would occur in the</p> <p>19 "but-for" world as a result of this kind of change,</p> <p>20 and there is some discussion, too, in the report as</p> <p>21 to what those kinds of changes are.</p> <p>22 But certainly, you change -- change</p> <p>23 one characteristic in a world where firms are</p> <p>24 optimizing, you can get a reaction, and those</p> <p>25 reactions would also cause a change in prices,</p>

<p>1 quantities and competitive behavior, and potentially</p> <p>2 other things.</p> <p>3 Q. Okay.</p> <p>4 So, in your view all the changes</p> <p>5 are the "but-for" world?</p> <p>6 A. Yes.</p> <p>7 Q. A whole list of things I think you</p> <p>8 said.</p> <p>9 A. That's not necessarily intended to</p> <p>10 be exhaustive, but you make one change, and then you</p> <p>11 have to make another, and the reaction to it could</p> <p>12 be a change, and that would cause many changes</p> <p>13 simultaneously.</p> <p>14 Q. And since you issued your report in</p> <p>15 Reitman in May, have you done any analysis of what</p> <p>16 the supply side would look like in your definition</p> <p>17 of the "but-for" world in this case?</p> <p>18 A. No. I have not done any additional</p> <p>19 work on -- on the supply side, no.</p> <p>20 (Pause)</p> <p>21 Q. Look at Paragraph 85 on Page 34 of</p> <p>22 Exhibit-2.</p> <p>23 Is this a paragraph in which you</p> <p>24 changed the prices and citations because the -- the</p> <p>25 ones you cited prior were not available anymore.</p>	<p>1 errors in Mr. Weir's calculations the same as in</p> <p>2 Reitman, although applied to different numbers?</p> <p>3 A. Generally, yes. It's the same kind</p> <p>4 of issues, because the data used for this is</p> <p>5 slightly different because Mr. Weir uses different</p> <p>6 prices for Wisconsin sales relative to the</p> <p>7 California sales.</p> <p>8 There is different matching issues,</p> <p>9 but, essentially, it's an issue of -- issue of</p> <p>10 matching products to prices, and so, that is,</p> <p>11 essentially, identical.</p> <p>12 (Pause)</p> <p>13 Q. Your opinion that Mr. Weir's</p> <p>14 estimation method overstates dollar sales of its</p> <p>15 accused products.</p> <p>16 Is that the same opinion you would</p> <p>17 -- you had offered in your first Reitman report?</p> <p>18 A. Which one are you referring to</p> <p>19 specifically?</p> <p>20 Q. It's paragraphs one and two on 103.</p> <p>21 (Pause)</p> <p>22 A. Oh, yeah.</p> <p>23 These are, essentially, the same.</p> <p>24 Q. I think you said you haven't</p> <p>25 received any additional retail sales data since your</p>
<p>1 A. That's exactly right.</p> <p>2 Q. Okay.</p> <p>3 So, this different pricing</p> <p>4 information doesn't change your opinions at all?</p> <p>5 A. No. It is -- it was an observation</p> <p>6 that there is -- there -- there do exist different</p> <p>7 prices, and that's still true.</p> <p>8 There is no change there.</p> <p>9 Q. Okay.</p> <p>10 So, starting on Page 39, Paragraph</p> <p>11 97, are your opinions related to -- is this opinion</p> <p>12 related to Dr. Krosnick's Pentobarbital survey, is</p> <p>13 this the same as the package in Reitman reported in</p> <p>14 Exhibit-1?</p> <p>15 A. Yes. This should be -- yes, it is</p> <p>16 the same opinion.</p> <p>17 Q. Okay.</p> <p>18 And the basis is the same -- the</p> <p>19 same we have already discussed today?</p> <p>20 A. Yeah.</p> <p>21 My answers to questions about this</p> <p>22 would be the same as the questions about the other</p> <p>23 one.</p> <p>24 Q. Okay.</p> <p>25 And are your opinions regarding</p>	<p>1 deposition in May of this year.</p> <p>2 A. That's correct.</p> <p>3 Q. Okay.</p> <p>4 Then starting on page 42 there's a</p> <p>5 discussion of the errors you identified in</p> <p>6 Mr. Weir's calculations.</p> <p>7 Like in Reitman, were these errors</p> <p>8 related to the time period of sales included, and</p> <p>9 then the packaging prices?</p> <p>10 A. Yeah. I think that's fair.</p> <p>11 Q. So, you would agree that if</p> <p>12 Mr. Weir corrected the errors that you identified</p> <p>13 here, at least according to his methodology, the</p> <p>14 math would be correct?</p> <p>15 A. Yes, he would be -- he would be</p> <p>16 consistent -- consistent with his own approach, yes.</p> <p>17 (Pause)</p> <p>18 A. As far as we know.</p> <p>19 (Pause)</p> <p>20 Q. With respect to Mr. Weir's</p> <p>21 Wisconsin damage calculations, did you identify any</p> <p>22 calculation errors that may have increased the</p> <p>23 damages under his methodology?</p> <p>24 MR. KESSLER: Object to form.</p> <p>25 THE WITNESS: Yeah, in this</p>

<p>1 particular --</p> <p>2 MS. BORRELLI: Diminution in sales.</p> <p>3 THE WITNESS: Yes. Yes. So -- so</p> <p>4 --</p> <p>5 MS. BORRELLI: Diminution of value.</p> <p>6 THE WITNESS: So -- so -- so, there</p> <p>7 were -- there is one situation. This one is in --</p> <p>8 in Table 5, the second footnote where he -- I think</p> <p>9 there is -- there is some cases where he misapplies</p> <p>10 a 13 pound package with a 13 kilogram package price,</p> <p>11 and that would actually cause it to increase.</p> <p>12 ---</p> <p>13 CONTINUATION</p> <p>14 BY MS. BORRELLI:</p> <p>15 Q. And is that increase included in</p> <p>16 the calculations you identify in Table 5?</p> <p>17 A. Yes.</p> <p>18 Q. Can you show me where?</p> <p>19 A. I'd have to look up these products.</p> <p>20 To see it actually in action, you</p> <p>21 would have to go to the sheet itself and --</p> <p>22 Q. Okay.</p> <p>23 A. -- see the corrections, but it</p> <p>24 would be for -- let's see, the product and payer --</p> <p>25 (Pause)</p>	<p>1 Q. And they were -- you offer an</p> <p>2 opinion about errors Mr. Weir had in calculating the</p> <p>3 illegal sale damages.</p> <p>4 So, like in your second Reitman</p> <p>5 report, Exhibit-1, are these errors limited to this</p> <p>6 time period, and then package pricing issues?</p> <p>7 A. Yes. There is going to be -- there</p> <p>8 is going to be a different -- both -- both of those</p> <p>9 factors are different here, but the -- the errors</p> <p>10 are in the same spirit.</p> <p>11 Q. And how do they differ?</p> <p>12 A. Just the time period is different,</p> <p>13 and the products effected are different. So, there</p> <p>14 is different -- if the products that were -- that</p> <p>15 were effected in both the -- the price issues could</p> <p>16 -- would extend across the two -- but it is</p> <p>17 different time periods, and some of the illegal</p> <p>18 sales damages products are not -- are only some of</p> <p>19 those.</p> <p>20 Well -- sorry.</p> <p>21 Those are a subset of all of the</p> <p>22 products that are considered in the other one, and</p> <p>23 there was products for which there is corrections in</p> <p>24 the broader population that don't apply here,</p> <p>25 because those products aren't included.</p>
<p>1 A. Let's see, if the price -- apple.</p> <p>2 Yeah, you can't see it directly</p> <p>3 because all -- this has all the changes all at</p> <p>4 once --</p> <p>5 Q. Huh-huh.</p> <p>6 A. -- but if you go to the actual</p> <p>7 backup, you can actually see the prices rise in</p> <p>8 that.</p> <p>9 So, for example, a can of lamb and</p> <p>10 an apple decreases partially. That's a time period</p> <p>11 issue, but also there's an offsetting effect.</p> <p>12 But in the backup -- in the backup</p> <p>13 to the calculation there is a spreadsheet tab called</p> <p>14 "Calculation" that has -- you can look specifically</p> <p>15 which prices were changed, and you can see when they</p> <p>16 increased.</p> <p>17 Q. So, you didn't intentionally</p> <p>18 exclude directions that would have increased</p> <p>19 damages?</p> <p>20 A. No. The once -- within the method</p> <p>21 used, mostly following the research team, and I give</p> <p>22 the framework, but the idea was to systematically go</p> <p>23 through and look for mismatches of products to</p> <p>24 prices and correct those errors consistently</p> <p>25 throughout. And so, those should be in there.</p>	<p>1 Q. Right.</p> <p>2 In your various understandings</p> <p>3 about the proper time period, are the basis for</p> <p>4 those understandings the same as we have already</p> <p>5 discussed with respect to your Reitman report?</p> <p>6 A. Yes. Same basis. Same approach.</p> <p>7 Q. And Mr. Weir made the calculations</p> <p>8 to his -- if Mr. Weir made the corrections to the</p> <p>9 calculations that you identify are necessary with</p> <p>10 respect to the illegal sales damages, would you</p> <p>11 agree that the damages number would be correct --</p> <p>12 MR. KESSLER: Object.</p> <p>13 MS. BORRELLI: -- to his</p> <p>14 methodology?</p> <p>15 MR. KESSLER: Object to the form.</p> <p>16 THE WITNESS: The -- the -- the</p> <p>17 figure is -- the figure would be correct based on</p> <p>18 his methodology.</p> <p>19 I would not say this is the -- this</p> <p>20 is necessarily a correct figure for damages, but,</p> <p>21 yes, the math would be correct based on his --</p> <p>22 MS. BORRELLI: Okay.</p> <p>23 Can we just take a few minutes, and</p> <p>24 I will be about done, just to make sure.</p> <p>25 MR. KESSLER: Yeah.</p>

1 VIDEO TECHNICIAN: The time is now
2 10:44 a.m., and we are going off the record.
3 ---

4 (Recess was taken at this time.)
5 ---

6 VIDEO TECHNICIAN: Stand by.
7 The time is now 10:48 a.m.
8 We are back on the record.
9 MS. BORRELLI: I don't think I have
10 anything else.

11 So, we are done.

12 Thank you for your time this
13 morning.

14 MR. KESSLER: I don't have any
15 questions.

16 So, that means your deposition is
17 concluded.

18 THE WITNESS: Thank you.

19 VIDEO TECHNICIAN: This is the end
20 of today's deposition of Dr. Lorin Hitt.

21 The time is now 10:49 a.m., and we
22 are going off the record.

23 ---

24 (Witness excused.)
25 ---

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1 ---
2 (Deposition concluded at
3 10:49 a.m.)
4 -----
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2 I, Debra G. Johnson-Spallone, certify that the
3 foregoing is a true and accurate transcription of
4 the notes taken by me on the date set forth.

5 I further certify that I am not an attorney or
6 counsel of any of the parties, nor a relative or
7 employee of any attorney or counsel in connection
8 with the action, nor financially interested in the
9 action.

10

11

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13

14

15 DEBRA G. JOHNSON-SPALLONE, CCR, RPR

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20 direct control and supervision of the certifying
21 reporter.

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1 INSTRUCTIONS TO WITNESS

2

3 Please read your deposition over carefully and
4 make any necessary corrections.

5 You should state the reason in the appropriate
6 space in the errata sheet for any correction that is
7 made.

8 After so doing, please sign and date the errata
9 sheet. You are signing subject to the changes you
10 have noted on the errata sheet, which will be
11 attached to your deposition.

12 It is imperative that you return the original
13 errata sheet to the deposing attorney within thirty
14 (30) days of receipt of the deposition transcript by
15 you. If you fail to do so, the deposition
16 transcript may be deemed to be accurate as submitted
17 and may be used in court.

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E R R A T A S H E E T

2 PAGE LINE CORRECTION REASON FOR

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C E R T I F I C A T E

2

3 I, the undersigned witness, do hereby certify that I
4 have read the foregoing deposition, and that to the
5 best of my knowledge, recollection and belief, said
6 deposition is true and correct with the exception of
7 the corrections listed:

8

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19

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21 Signature

22 Date

23

24

25

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